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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 02-CR-307  
v. : U. S. Courthouse  
JOSEPH MASSINO, : Brooklyn, New York  
Defendant. : July 10, 2013  
3:00 o'clock p.m.  
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TRANSCRIPT OF RESENTENCING  
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS  
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Government: LORETTA E. LYNCH  
United States Attorney  
By: TARYN MERKL  
NICOLE ARGENTIERI  
JACK DENNEHY  
Assistant U. S. Attorneys  
271 Cadman Plaza East  
Brooklyn, New York 11201  
For the Defendant: EDWARD McDONALD, ESQ.  
Court Reporter: Anthony M. Mancuso  
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Brooklyn, New York 11201  
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1 (Case called; both sides ready.)

2 THE COURT: Please be seated.

3 MS. MERKL: Your Honor, the defendant is not here.

4 Taryn Merkl for the United States. Together with me is Nicole  
5 Argenti eri and Jack Dennehy.

6 MR. McDONALD: Edward McDonal d for Mr. Massi no, your  
7 Honor.

8 THE COURT: All right. We'll wait for the  
9 defendant.

10 THE COURT: All right. The defendant is present.  
11 Good afternoon, Mr. Massi no.

12 THE DEFENDANT: Good afternoon, your Honor. I'm  
13 sorry.

14 THE COURT: All right.

15 Ms. Merkl , the floor is yours.

16 MS. MERKL: Your Honor, we're here on the  
17 government's motion pursuant to Rule 35 seeking a reduction in  
18 sentence for the defendant Joseph Massi no. The government has  
19 detailed Mr. Massi no's cooperation in our memorandum dated  
20 June 10 of this year, which was filed publicly, and we  
21 respectfully rest on the contents of that motion as to the  
22 details of the speci fic assistance that Mr. Massi no provided  
23 in regard to indicted cases and investigations.

24 I just wanted to elaborate on a couple of very brief  
25 points, as set forth in our motion.

1           Mr. Massino's cooperation did in fact render  
2   substantial assistance, as is detailed in our lengthy motion.  
3   His willingness to make tape-recordings before he had even  
4   been signed up as a cooperating witness evidenced his  
5   willingness to try the cooperation and ultimately the tapes  
6   that he made, what we call the Massino Tapes now, really  
7   yielded important evidence that the government has used in  
8   multiple prosecutions, not limited to the Vincent Basciano  
9   trial, over which your Honor presided.

10           Mr. Massino has led a life of crime, there's no two  
11   ways around it, and nothing in the government's presentation,  
12   in the papers or our argument here today in support of our  
13   motion, is in any way trying to detract from that, apologize  
14   for it, or condone the life that he led for the majority of  
15   his adult years.

16           But at the same time, Mr. Massino decided to make a  
17   change, and when he made that change, he was fully on board.  
18   He provided the government with all of the information that he  
19   could muster. He's been available to the government for phone  
20   calls, for interviews, and we expect, and his counsel has  
21   confirmed, that he will continue to be available to the  
22   government should we need to call upon him in future cases or  
23   to ask him questions about organized crime intelligence  
24   information about which he would know.

25           In light of all of that, the government respectfully

1 submits that resentencing is appropriate. Mr. Massino is  
2 currently serving two life sentences that were imposed  
3 consecutively by your Honor, but in order for our practice to  
4 work, in order for us to actually infiltrate these entrenched  
5 criminal syndicates, like the five families of New York, the  
6 government needs cooperating witnesses like Mr. Massino. We  
7 need insider information, so that we can prosecute and hold  
8 those accountable for heinous crimes in court with live  
9 witnesses, live testimony like that provided by Mr. Massino in  
10 both the Basciano trial, and then again in the Bartolomeo  
11 Vernace trial earlier this year.

12 That being said, we rest on our papers. Thank you,  
13 your Honor.

14 THE COURT: Thank you.

15 Let me ask this: With respect to potential  
16 victim-impact testimony, will there be any victim-impact  
17 witnesses speaking at this hearing?

18 MS. MERKL: Your Honor, we did notify victims that  
19 were in our system and that the FBI had contacted information  
20 for, and I have not received a word from any victims asking to  
21 be heard today.

22 THE COURT: All right. Thank you.

23 The Court has received, in addition to the  
24 government's motion for resentencing pursuant to Federal Rule  
25 of Criminal Procedure 35B and the attachments A and B to that

1 motion, the Court has also received, filed ex parte and under  
2 seal, a letter from the government further documenting the  
3 defendant's cooperation in certain matters which are still  
4 under investigation.

5 In addition, the Court has received a letter which  
6 was filed under seal from Mr. McDonald, a redacted copy of  
7 which -- not including certain confidential information about  
8 the defendant's medical history and situation -- which was  
9 filed publicly on the docket, and also the Court has received  
10 a confidential addendum to the Presentence Report from the  
11 Probation Department. The Court has reviewed all of these  
12 papers.

13 Is there anything else that's been filed with the  
14 Court that I have not identified?

15 MS. MERKL: Not to my knowledge, your Honor.

16 THE COURT: Mr. McDonald, anything else?

17 MR. McDONALD: No, your Honor.

18 THE COURT: Mr. McDonald, is there anything that you  
19 would like to say with regard to the motion to resentence at  
20 this time?

21 MR. McDONALD: Yes, your Honor.

22 I have four points that I would like to make. First  
23 of all, with respect to substantial assistance, there's little  
24 to add to what Ms. Merkl has said. I think it's fair to say  
25 that Mr. Massino is the most important organized crime figure

1 ever to cooperate with the Justice Department in the history  
2 of the war against organized crime.

3 Certainly, he was in a position to know, and, most  
4 importantly, I think, from the government's standpoint, he  
5 remembered. His memory has been truly outstanding. He's a  
6 walking encyclopedia of the history of organized in the  
7 New York metropolitan area for the last fifty years.

8 The information that he's provided to the government  
9 is, I think, and I don't want -- it speaks for itself. It's  
10 been extraordinary, and it's led to some real successes for  
11 the FBI and for the Justice Department.

12 Your Honor, secondly, we can't sort of diminish the  
13 severity or excuse the severity of Mr. Massino's wrongdoing,  
14 but I do want to point out that at this point he has been  
15 punished. He has been incarcerated for more than ten and a  
16 half years. He went to prison, was arrested on this matter in  
17 January of 2003. He has served an equivalent of what would be  
18 a twelve-year sentence. In addition, he did something which  
19 was rare, if not unprecedented for a person in his position.  
20 He voluntarily gave the government seven and a half million  
21 dollars in cash. It was part of a forfeiture. In addition,  
22 gold bars worth several hundreds of thousand of dollars in  
23 addition to that. There was real estate property worth a few  
24 million dollars which was seized by the government the  
25 government placed a lien on. In any case, he has parted with

1 a great deal of his ill-gotten gains.

2 Third, most importantly is the health issue. In the  
3 confidential submission that we made and the Presentence  
4 Report, the Revised Presentence Report submitted by the  
5 Probation Department, I think it's clear that Mr. Massino is a  
6 very sick and tired old man at this point. Your Honor, he is  
7 in need of treatment, and I think that there is little risk  
8 that if he's released, that he will resume his life of crime.

9 If he is not released, there is a risk that he will  
10 die in prison, and he will die in prison in the  
11 not-too-distant future.

12 Finally, your Honor, I supervised the prosecution of  
13 Mr. Massino here in this courthouse -- actually, the old  
14 courthouse across the lobby -- in 1986, when I was the head of  
15 the Federal Organized Crime Strike Force. Your Honor, at that  
16 point, he was convicted after a seven-month trial by the late  
17 Judge Charles Sifton, he and twelve other individuals, the  
18 entire hierarchy of the Bonanno Crime Family at that time.  
19 Unfortunately, I guess, our position at that point was  
20 unfortunate that he received only a five-year sentence, and  
21 when he was released from prison, he became the boss of the  
22 family.

23 Your Honor, in 1986, it was inconceivable that I  
24 would be asked by the Court to represent Joe Massino. It was  
25 even more inconceivable that Joe Massino would be cooperating

1 with the Department of Justice and the FBI. His cooperation,  
2 cooperation of someone who has been called the boss of bosses  
3 and the last don, is an important milestone in the history of  
4 the war against La Cosa Nostra. When he cooperated, he sent a  
5 message to everyone, particularly people on the street, that  
6 omerta, the code of silence, is really dead, and that the  
7 Mafia is on the run.

8           They might be on the run, but the war is not over,  
9 and the government, as Ms. Merkl has said, still needs  
10 cooperators. Your Honor, I think the message here that he has  
11 sent is that, If Joseph Massino can cooperate, so can I. But  
12 if he is going to be dying in jail, people will think, If I  
13 cooperate and I die in jail, there's not much point in my  
14 cooperating, either.

15           So, your Honor I think the time has come to release  
16 Mr. Massino, and I ask that you order that he be released from  
17 prison as soon as is practicable.

18           THE COURT: Thank you.

19           Mr. Massino, before I rule on the government's  
20 motion and impose a sentence upon you, is there anything that  
21 you would like to say to the Court?

22           THE DEFENDANT: Yes, your Honor.

23           THE COURT: Please go ahead.

24           THE DEFENDANT: I pray every night for forgiveness  
25 for all the people that I hurt, especially the victims'



1 families, your Honor.

2 Thank you.

3 THE COURT: Thank you.

4 More than eight years ago, following conviction at  
5 trial as well as a plea of guilty on a variety of the charges,  
6 this Court sentenced Joseph Massino to two consecutive terms  
7 of life in prison. Shortly thereafter, on June 28, 2005, the  
8 government properly filed a pro forma Rule 35 motion pursuant  
9 to the Federal Rules of Criminal Procedure, held in abeyance.

10 The government now submits its Supplemental Rule 35  
11 motion, which asks the Court to resentence Mr. Massino based  
12 on his extensive cooperation during the intervening years.  
13 The motion is granted for the following reasons.

14 For this resentencing, the Court first considers the  
15 defendant's illegal conduct, including decades of criminality  
16 during his association with the Bonanno Organized Crime  
17 Family. Mr. Massino, for over twenty years, was the acting  
18 leader and later the permanent leader of that criminal  
19 enterprise, and he took part in at least eight murders, as  
20 well as many other illegal activities.

21 In addition, however, the Court takes into  
22 consideration the extensive assistance Mr. Massino has  
23 provided to the government, and the substantial risk to his  
24 own life and to his family members' lives that he assumed in  
25 helping the government in its investigations and prosecutions

1 of members of organized crime. The Court also notes  
2 Mr. Massino's declining health and advancing age.

3 As the government explains in its motion,  
4 Mr. Massino's cooperation has provided significant and  
5 extensive assistance in the investigation and prosecution of  
6 many members and associates of the American Mafia.  
7 Mr. Massino testified about his crimes in open court, and  
8 helped to cripple an organization that was extraordinarily  
9 dangerous, costly and harmful to society in general and this  
10 region in particular. Mr. Massino assisted the government in  
11 ongoing investigations, and he also detailed numerous  
12 additional crimes that were previously unknown to the  
13 government.

14 The government submits to the Court that  
15 Mr. Massino's assistance has been extremely valuable to the  
16 effort to dismantle organized crime in general and especially  
17 the Bonanno Family. While in detention, he wore a wire that  
18 provided vital recordings of conversations with top Mafia  
19 figures, and further assisted the government in understanding  
20 those and other recorded discussions.

21 His assistance was important in numerous cases, and  
22 particularly essential in the investigation of four successive  
23 leaders of the Bonanno Family, including Vincent Basciano,  
24 Michael Mancuso, Salvatore Montagna and Vincent Badalamenti.

25 Mr. Massino testified at the death-penalty trial of

1 Vincent Basciano, a former acting boss of the Bonanno Family,  
2 providing what the government calls "critical evidence" in a  
3 case where Basciano was convicted of all charges. He also  
4 testified at the trial of Genovese Family member Anthony  
5 Romanello last year.

6 Also, and of special note, Mr. Massino's cooperation  
7 included providing critical information about a possible plot  
8 against a federal prosecutor.

9 The government's explanation of Mr. Massino's  
10 assistance supports his counsel's assertion that "It is fair  
11 to say that not only is Mr. Massino the most prominent La Cosa  
12 Nostra leader ever to cooperate, but also that seldom in the  
13 history of the war against organized crime has anyone  
14 contributed so much to the government."

15 Finally, the government assures the Court that  
16 Mr. Massino is expected to continue to provide assistance in  
17 other investigations and cases as they arise even if the Court  
18 grants the government's motion and reduces his sentence.

19 The government also notes the important policy  
20 implications in this case. The justice system often requires  
21 cooperators like Mr. Massino to uncover criminal activity,  
22 especially those perpetrated by secretive organizations. In  
23 particular, as the first official boss of the American Mafia  
24 to publicly cooperate and testify, Mr. Massino's assistance  
25 has almost certainly caused numerous other members of

1 organized crime to cooperate with the government.

2 Quite simply, Mr. Massino may be the most important  
3 cooperator in the modern history of law endorsement effort to  
4 prosecute the American Mafia. He has provided information  
5 about the highest levels of the Mafia, including testifying in  
6 open court, assisting dozens of investigations and helping  
7 lead to numerous additional arrests and convictions.

8 His cooperation has been in two different  
9 components. First, vertical cooperation, regarding his  
10 family, the Bonanno Organized Crime Family, and also  
11 horizontal cooperation, due to his knowledge of the activities  
12 of the four other La Cosa Nostra families in New York as a  
13 member of ruling commission of the New York Mafia.

14 The Court is under no illusions about the  
15 motivations for Mr. Massino's cooperation. In helping the  
16 government, he has also helped himself, and his cooperation in  
17 no way excuses or justifies his life of crime. Nevertheless,  
18 his cooperation has brought great risk upon himself and his  
19 family, and great benefits for the government's efforts to  
20 dismantle organized crime. In resentencing Mr. Massino, this  
21 Court considers that the sort of cooperation and assistance he  
22 has provided was of tremendous benefit to the government and  
23 to the interests of justice.

24 In summary, in determining whether Mr. Massino's  
25 case is appropriate for resentencing and downward departure

1 from the Guideline range, the Court has considered his serious  
2 and extensive criminal history, his extraordinary cooperation  
3 with the government, and his willingness to place himself at  
4 grave personal risk. The Court also notes that Mr. Massino is  
5 seventy years old and is in failing health. Mr. Massino's  
6 physician explains that his health problems "almost certainly  
7 limit his longevity significantly" and that he is "a very sick  
8 man." Yet he has continued to assist the government despite  
9 his significant and sometimes grave health issues.

10 Mr. Massino explains in his submission that he has  
11 the capacity to support himself, which, along with his age and  
12 ailments, reduces the Court's concern about possible  
13 recidivism.

14 Considering all these factors, in addition to the  
15 publicly filed and sealed admission from the government and  
16 defense counsel, and the addendum background materials  
17 provided in the plea sentence investigation report, the Court  
18 finds that the defendant has provided substantial assistance  
19 to the government.

20 The Court therefore grants the government's motion  
21 for resentencing pursuant to Rule 35. Mr. Massino has been in  
22 jail for approximately ten and one half years. The government  
23 has advised the Court that his record as a prisoner is  
24 unblemished, and so his incarceration time as of now,  
25 accounting for good-time credit, is commensurate with having

1 served a sentence of approximately twelve years in prison.

2 The Court will now resentence Mr. Massino to a  
3 sentence that is sufficient but not greater than is required  
4 to fulfill the purposes of sentencing, taking into account his  
5 many years of cooperation with the government.

6 Are you ready to be sentenced?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Please stand.

9 I sentence you as follows: Time served, supervised  
10 release for the rest of your life. As a condition of your  
11 supervised release, you shall not possess a firearm,  
12 ammunition or destructive device. I direct you to continue in  
13 your supervision to assist the government as a cooperator with  
14 respect to the activity of La Cosa Nostra to the extent that  
15 the government requests you to do so.

16 During your period of supervised release, your  
17 supervision will be under the auspices of the Federal Bureau  
18 of Investigation and not the Probation Department.

19 Does the government have any additional  
20 applications?

21 MS. MERKL: We do, your Honor.

22 With regard to the terms of Mr. Massino's supervised  
23 release, we would also request that Mr. Massino be directed  
24 not to associate with any members or associates of organized  
25 crime for the remainder of his life.

1 THE COURT: I also direct that you not associate  
2 during the rest of your life with any of the associates or  
3 members or other participants in organized crime.

4 MS. MERKL: And we would also request, respectfully,  
5 that your Honor delay the execution of that sentence for sixty  
6 days to enable the government to make appropriate security  
7 arrangements in consultation with the FBI and the Marshals  
8 Service.

9 THE COURT: I grant the application.

10 I'm going to stay the imposition of the sentence for  
11 sixty days, and a judgment will not issue for sixty days in  
12 order that the government may make the necessary arrangements  
13 for the defendant's post-incarceration security.

14 Is there anything else from the government?

15 MS. MERKL: Nothing from the government, your Honor.  
16 Thank you.

17 THE COURT: All right.

18 Mr. McDonald, is there anything else from you?

19 MR. McDONALD: No, your Honor.

20 THE COURT: Then I take it I don't need to inform  
21 you that you have the right to appeal your sentence to the  
22 United States Court of Appeals.

23 MR. McDONALD: I don't think we need that, your  
24 Honor.

25 THE COURT: Then I won't make that statement.

1 All right. Is there anything else from anyone?

2 MS. MERKL: No. Thank you.

3 MR. McDONALD: No. Thank you, your Honor.

4 THE DEFENDANT: Thank you, your Honor.

5 THE COURT: You are welcome.

6 The defendant will leave first.

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